IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1711 of 1982
with
CIVIL REVISION APPLICATION No. 1712 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECD SULTANJI NOORMAHMAD CHHIPA

Versus

GAFURBHAI AHMEDJI BIYAVARWALA DECD THRO' HEIRS & LRS

Appearance:
MR UDAYAN P. VYAS for MR BHARAT J SHELAT for Petitioners
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/01/2001

ORAL JUDGEMENT

These two Revisions arising out of the common judgement are proposed to be disposed of by common judgement.

The plaintiffs are owners of a house situated in Tadni Sheri, Jamalpur, Ahmedabad. There are three shops on the ground floor of this house and two residential rooms on the first floor. The defendant was a tenant in two rooms on the first floor on monthly rent of Rs. 30/plus municipal tax, bearing Municipal No. 971. The plaintiffs filed H.R.P Suit No. 2094/77 against the defendant for eviction and recovery of arrears of rent etc. for these two residential rooms on the first floor on three grounds; firstly that the tenant respondent was in arrears of rent for a period exceeding six months, which he failed to pay despite service of notice of demand within a month of service of such notice. The other ground was that the respondent made permanent construction and structure in the suit premises without written permission of the landlord and the third was that the tenant respondent acquired suitable residential accommodation for his use and occupation.

The other suit was filed against the respondent in respect of two shops on the ground floor bearing M.C Nos. 968 and 968/1, which were let out to him on a monthly rent of Rs. 60/- besides Municipal taxes. The other suit was numbered as H.R.P Suit No.2095/77. Eviction was sought in this suit on the ground of arrears of rent exceeding six months which he failed to pay despite service of notice of demand within a month of service of such notice. The other ground was construction of permanent nature in the suit premises without written permission of the landlord and the third ground was reasonable and bonafide requirement of the two shops for the landlord.

Both the suits were consolidated and decided by a common judgement. The only point pressed before the trial Court was that there was no relationship of landlord and tenant between the parties. The trial Court found that the relationship of landlord and tenant between the parties was duly established. Since there was no evidence in rebuttal from the side of the respondent on the remaining issues, those issues were decided by the trial Court in favour of the plaintiffs. Accordingly, both the suits were decreed.

Feeling aggrieved, the tenant - respondent filed appeals before the lower appellate Court, which were numbered as Civil Appeal Nos. 111/81 and 112/81. These two appeals were also decided by a common judgement. In the appeals also, the only point stressed was that there was no relationship of landlord and tenant between the

parties. The appellate Court however, differed with the decision of the trial Court and concluded that the relationship of landlord and tenant between the parties was not established and hence, the landlords were not entitled to decree for eviction for arrears of rent on any ground whatsoever. Accordingly the appeals were allowed and judgement and decree of the trial Court were set aside.

Feeling aggrieved the landlords have filed these two revisions.

It appears from the record that the tenant-respondent Gafurbhai Ahmedji Biyavarwala expired during the pendency of the revision. Thereupon his legal representative numbering 8 were substituted. They are duly served, but they are absent, nor any Counsel is present on their behalf. As such Shri U.P. Vyas on behalf of Shri B.J.Shelat, learned Counsel for the petitioner was heard and the judgements of the two Courts were examined.

The fate of these two revisions hinges around the fact whether the plaintiff established the relationship of the landlord and the tenant between the parties. Normally, the onus of proof on this issue lies upon the landlord, but the tenant has also come out with a definite case that he was not a tenant in the two accommodations but was accommodated gratuitously till the debt of Rs. 25,000/- outstanding against Noormahmad Chhipa was paid to him. As such when both the parties have adduced evidence on the point, the question of onus of proof looses its significance and it becomes academic exercise and as such the evidence on record adduced by the two sides should have been examined by the lower appellate court and not that the appeals should have been decided only on the ground that the trial Court erred in discussing the evidence of the tenant first.

After carefully examining the judgements of the two Courts below, I am of the view that the judgement of the lower appellate Court is perverse and contrary to law, hence revisional interference is required in both these revisions. Finding on question of relationship of landlord and tenant between the parties is a finding on question of fact. Such finding generally requires no interference by the revisional Court, but if the revisional Court finds that the documentary evidence was not properly appreciated by the lower appellate Court, revisional interference is justified inasmuch as it would amount to perversity in the judgement. Likewise certain

observations had been made by the lower appellate Court, which can also be called not only illegal, but perverse. To highlight these infirmities in the judgement of the lower appellate Court it has to be seen in what manner the case has been discussed by the lower appellate Court.

The plaintiffs could not have adduced better evidence than by examining the two witnesses one of whom was collecting the rent. It was not necessary that all the plaintiffs or any of the plaintiffs should have been entered the witness box. No adverse inference should have been drawn because the plaintiffs did not enter witness box but they have examined their rent-collector who was managing property and collecting rent, not only from one tenant but also from as many as 80 tenants. Such rent collector was certainly a better person to depose about the relationship of landlord and tenant between the parties. The statement of the rent collector was not properly appreciated by the lower appellate court. On the other hand the trial court by giving cogent reasons has placed reliance upon oral evidence of the rent collector.

Coming to the documentary evidence, it is an admitted fact that no rent note was executed between the parties. No other documentary evidence in the nature of lease deed or rent note in these circumstances could be brought on record by the landlord. The oral evidence of the rent collector found some corroboration from the account books maintained by the landlords. Those account books were criticised by the lower appellate Court on the ground that they were not maintained in usual course of business. The lower appellate Court had forgotten that it was not a case for recovery of money due on the basis of accounting or on the basis of goods sold and purchased. Consequently the concept of account books not having been maintained in usual course of business could not have been incorporated by the lower appellate court on the facts and circumstances of the case. As many as four registers containing accounts of not only of the respondent, but other tenants were placed before the trial Court and in those registers the name of the defendant was shown as tenant not only of the residential rooms, but also of the two shops. There was no reason why a false entry to the disadvantage of the landlords would have been made in these registers especially when no rent was collected by the landlords or paid by the tenant to the landlords. Prima-facie the account registers should have been relied upon. The lower appellate Court in not relying upon these registers committed manifest illegality which amounts to perversity

in appreciation of documentary evidence.

The oral evidence on behalf of the plaintiff also found some corroboration from Municipal assessment register in which the name of the respondent was shown as tenant. Normally entry in Municipal register is no clinching evidence for establishing the relationship of landlord and tenant between the parties, but such entry has certainly corroborative value inasmuch as it can corroborate the plaintiff in what capacity the defendant was residing in the residential portion and was occupying the commercial portion, namely the two shops. The entries in the Municipal registers could not be controverted by the respondent by adducing any evidence that these entries were collusive or false. Once it is found that the rent was not paid for a long period of 35 years, there is no reason why the name of the respondent should have been shown as a person occupying the suit portion as tenant. This corroborative evidence was also wrongly ignored by the lower appellate Court. The relevant entries in the Income-tax return showing the respondent as tenant was also lightly brushed aside by the lower appellate Court. Entries regarding wealth-tax indicating the name of the respondent as tenant was likewise very lightly taken by the lower appellate Court. These documentary evidences corroborated the two witnesses examined by the plaintiffs. On the facts and circumstances of the case, no better evidence could be added by the plaintiff for establishing the relationship of landlord and tenant.

Now it is to be seen to what extent the defendant's version has demolished the plaintiff's case. The defendant pleaded that he did not occupy the two portions as tenant, rather a joint business was carried on by the defendant and Noormahmed Chhipa, maternal uncle of the defendant and in that joint business Rs. 25,000 were due to the defendant from Noormohamad. It is also stated that another sum of Rs. 10,000 became due to the defendant from the plaintiff and the defendant was permitted to occupy two rooms on the first floor and two shops on the ground floor, till the amount of Rs. 25,000 and Rs. 10,000 was paid by the plaintiff or his successors to the defendant and after the amount was paid the defendant was to occupy these portions as tenant on a rent to be settled subsequently. This version, on the basis of it does not inspire confidence. In the first place there is no evidence to prove that Rs. 25,000 and Rs. 10,000 at any time fell due from the plaintiffs to the defendant or from Noormahmed Chhipa to the defendant. No such debit entry could be shown in the account books

produced by the plaintiffs. Mere oral statement of the defendant is not enough to accept this stand. Moreover, it also does not appeal to reason that Noormahmed Chhipa would have permitted the defendant to occupy two portions till Rs. 25,000 was paid by him or his successor to the defendant. There was no occasion or reason why for such indefinite period Noormahmed Chhipa could have permitted the defendant to occupy residential as well as commercial portion gratuitously. The defendant never pleaded that any portion of the rent was paid by him. Consequently he cannot be heard to say that he had a right to occupy for indefinite period the two accommodations gratuitously. The trial Court has properly considered oral as well as documentary evidence on record and the lower appellate Court was not justified in reversing the findings of the trial Court on this point.

The approach of the lower appellate Court on the legal side has also been erroneous. The lower appellate Court observed that four ingredients are required to be established for proving the transaction of lease. According to the lower appellate Court, the first ingredient is right to enjoy the immovable property. This ingredient, according to the lower appellate Court, was established. The lower appellate Court observed that the second ingredient is duration for which such enjoyment was permitted. The third is the consideration which may be the price paid or promised or of money either in cash or kind and the fourth is acceptance of transfer by the transferee. According to the lower appellate Court, these three ingredients were not established by the landlord, hence, relationship of landlord and tenant could not be established between the parties. In my opinion, the landlords have established that the two portions were separately let out at different intervals on monthly rent of Rs. 30/- and 60/respectively for the residential and commercial portion. This establishes the third ingredient. The second ingredient is also established inasmuch as the tenant has right to enjoy the leased property till he fulfils the conditions of lease. Since he did not pay the rent for a period exceeding six months even after service of notice of demand, he lost right of enjoyment thereafter. The fourth ingredient regarding acceptance of transfer is also established because the landlords succeeded in establishing that the respondent accepted two portions as tenant and occupied the premises in Suit as tenant. As against this, the respondent failed to establish that he occupied the two portions gratuitously for a period till the so-called unestablished dues of Rs. 25,000/- were paid by Noormahmed Chhipa or by his

successors to the defendant. In this way also the lower appellate Court committed patent illegality in considering the relationship of landlord and tenant between the parties.

The trial Court has categorically observed that on other issues there is no evidence from the side of the defendant to rebut the evidence of the landlord. Consequently, the trial Court was bound to accept the uncontroverted evidence on record and the evidence given by the landlord. Even in the appellate Court nothing was argued to assail the findings of the trial Court on other issues. The only point pressed before the lower appellate Court was non-existence of relationship of landlord and tenant between the parties. Consequently, in the absence of evidence in rebuttal from the defendant - tenant, the trial Court was justified in granting decree for eviction and also passing decree for arrears of rent. The lower appellate Court was therefore in error in disturbing the judgement and decree of the trial Court.

In view of the above discussion, both the revision succeed and are hereby allowed. The common judgement and decree of the lower appellate Court dated 20.7.1982 are hereby quashed and set aside and the common judgement and decree dated 27.2.1981 of the trial Court are restored. Since none has appeared on behalf of the respondents, there shall be no order as to costs in these two revisions.

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